IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

LPA No.7 of 2007.
Judgment Reserved on:06.12.2007

Date of decision: 31.12.2007

Hon'ble High Court of Himachal Pradesh …**Appellant**

Versus

Shri Tek Ram & Others ….**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

The Hon'ble Mr.Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Appellant: **Mr.Bipin C.Negi, Advocate.**

For Respondents 1-8: **Ms.Jyotsna Rewal Dua, Advocate.**

For Proforma Respondents 9-20: **Mr.Tarlok Chauhan, Advocate.**

Dev Darshan Sud,J.

This Letters Patent Appeal has been preferred by the High Court against the judgment of the learned Single Judge passed in CWP No.1743 of 2002, accepting the writ petition filed by the petitioners therein, (the contesting respondents No.1 to 8 herein and S/Shri Hem Raj and Ramesh Chand) praying for the following reliefs:-

> *"1. That items No.8 and 10 of Schedule-III of the High Court of Himachal Pradesh*

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

(Recruitment, Conditions of Service and Conduct (Eighth Amendment) Rules, 2000 i.e. Annexure-PC dated 22nd July, 2000, and items No.4 & 5 of Schedule-B of Annexure-PF, dated 25th/26th November, 2003 and items No.4 and 5 of Schedule-B of Annexure-PG, dated 9th September, 2004 respectively may be struck down being ultra vires Articles 14 & 16 of the Constitution of India or alternatively items No.8 & 10 of Schedule-III of Annexure-PC, dated 22nd July, 2000 and items No.4 & 5 of Schedule-B of Annexure-PF & PG, dated 25th/26th November, 2003 & 9th September, 2004 respectively may be read down to include the category of petitioners i.e. Private Secretaries as feeder category for promotion to the posts of Assistant Registrars and Court Secretaries to bring them at par with other feeder categories.

2. That the impugned Annexures PB & PE, dated March 10th, 2002, 22nd November, 2002 respectively may be quashed and set aside".

The learned Single Judge, on a detailed consideration of facts, held that with the amendment

in the Rules, Superintendents and other ministerial staff excluding the category to which the petitioners belong, were placed on better and more advantageous footing than Private Secretaries and the staff employed on the Stenography side. The learned Single Judge, after examining the record in detail, notes and rightly holds that Justice R.L. Khurana had made certain recommendations including one that Private Secretaries should be included in the feeder category for the post of Court Secretary. Their representations for being placed in the feeder category for the promotion of Assistant Registrar were not accepted. The record shows that the recommendations were put before the Acting Chief Justice who had approved them. The matter was then ordered to be processed by the Registry. In the meantime, some representations were received from the Non Gazetted Employees Association of this Court in which objections were raised to the Private Secretaries being included in the feeder category of Court Secretary. The Acting Chief Justice, before whom the file was put up, directed for preparation of a detailed note from the Registry. The learned Judge holds that Superintendent(Rules) gave short shrift to the recommendations of the Hon'ble Judge, obscured the issue involved and recommended that Court Secretaries should be appointed by selection from amongst Marriage Counsellor and Chief Librarian excluding the category

of Private Secretary in the feeder cadre. The learned Single Judge notes that this was contrary to the recommendations which were made by the Justice Khurana and accepted by the Acting Chief Justice, Ms.Justice Kamlesh Sharma. He has reached this conclusion on a detail consideration of the notings on the file. There is categorical finding that the note referred to hereinbefore recommending the case of the petitioners was obscured and did not draw the attention of the Chief Justice to the recommendations of Justice Khurana as accepted by Justice Sharma.

Without dealing with the facts and the other submissions made by the counsel appearing for the parties, the learned Single Judge, quashed the amendment made in the rules with the further observation that the Chief Justice should reconsider the matter in view of the recommendations which had been made by Justice Khurana and accepted by Acting Chief Justice Ms.Justice Kamlesh Sharma, conveniently brushed aside by the Superintendent(Rules) who had no business doing so.

The High Court has appealed against this decision. Learned counsel appearing for the appellant has raised a number of points for consideration. He submits that no writ can be issued to the Chief Justice under Article 226 of the Constitution of India directing him to act in a particular manner, as in the present case, to frame rules in a particular manner.

He submits that the powers of the Chief Justice under Article 229 of the Constitution of India are legislative and cannot be fettered by the writ jurisdiction vested in this Court under Article 226. He places reliance on ***Shamrao Shripat Tamgade & etc. vs. State of Maharashtra & Ors., 2007 LAB.I.C. 224,*** in which the Full Bench of Bombay High Court held:

> ***"24.*** *Hence the power of the Chief Justice is neither absolute nor unfettered. However no Court under Article 226 of the Constitution of India has the power to direct the Chief Justice to frame or formulate rules or make appointments for a particular purpose since that would mean impinging on the discretion of the Chief Justice. In other words although the Court has every power to examine the constitutional validity of rules framed under Article 229 of the Constitution of India, but it cannot issue directives to the Chief Justice to frame rules for the benefit of a certain section of society. To put it in other words, no Writ of Mandamus would lie against the Chief Justice to legislate rules under Article 229 of the Constitution of India".*

The proposition, put forth by the learned counsel, is an established principle of law. However, in the present case, we cannot agree with the submissions as no direction has been issued by the

learned Single Judge. As a fact he holds that the Hon'ble Chief Justice was not apprised about the various recommendations which have been made by Justice Khurana and Acting Chief Justice, Ms.Justice Kamlesh Sharma and the fact that the Committee so appointed had also disposed of the representations made by the Private Secretaries. The only direction which has been issued is to put up the file before the Hon'ble Chief Justice on the administrative side and a direction to the Registry to prepare a proper note depicting the entire factual position. The judgment is in the following terms:-

> *"The file shall again be put up before the Hon'ble Chief Justice on the administrative side alongwith a copy of this judgment. The Registry shall prepare a proper note depicting the entire factual position. The Chief Justice may thereafter take a fresh decision in the matter and decide the question whether the Private Secretaries are to be included in the feeder category to the post of Court Secretary. The Hon'ble the Chief Justice is requested to take a decision in this matter by 31st March, 2007 and he may do so after considering the entire factual aspect and the representations of the Private Secretaries/Stenographers on one side and the Superintendents/ministerial*

> *staff on the other side. The rules that the Hon'ble the Chief Justice frames will be effective from the date when the posts of Court Secretaries were upgraded. However, the Readers, who were holding the posts of Court Secretaries having been appointed in terms of the recommendations of the committee, will not be disturbed. Till the Hon'ble the Chief Justice takes a decision in the matter status quo as on date shall continue.*
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> *With the aforesaid observations, the writ petition is disposed of".*

Surely, this request made to the Chief Justice to reconsider the matter on the administrative side, cannot be construed as a direction. In the judgment, the learned Single Judge also notes that the recommendations which had been made should have been put up before the Chief Justice without embellishment and distortion and not pushed into a corner, where-after, he was free to have accepted or rejected them.

The second contention raised by the learned counsel appearing for the appellant is that subordinate legislation cannot be questioned on the ground of violating the principles of natural justice. The rules, according to the learned counsel, are in the nature of subordinate legislation and the fact that they offend the principles of Natural Justice or that the Chief Justice may or may not have

considered the recommendations, cannot be ground for challenging the rules. He places reliance on the judgment of the Hon'ble Supreme Court in ***Indian Express Newspapers (Bombay) Private Ltd. and Others vs. Union of India and Others, (1985)1 SCC 641,*** holding that:

> ***"78.*** *That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in* ***The Tulsipur Sugar Co.Ltd. v.Notified Area Committee, Tulsipur, (1980)2 SCC 295, Rameshchandra Kachardas Porwal v. State of Maharashtra, (1981)2 SCC 722 and in Bates vs. Lord Hailsham of St.Marylebone, (1972)1 WLR 1373.*** *A distinction must be made between delegation of a legislative function in the case of which question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking relevant matters into consideration, failure to take relevant matters into consideration etc.,etc. On the facts and circumstances of a case, a subordinate legislation may be struck*

> *down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant".*

In ***Supreme Court Employees Welfare Association vs. Union of India and Others, AIR 1990 SC 334***, the Court held:

> ***"55.*** *On the basis of the principles of law laid down in the above decisions, it is urged by the learned Attorney General that this Court cannot issue a mandate to the President of India to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave and pensions of the officers and servants of the Supreme Court. In other words, the President of India cannot be compelled to grant approval to the proposals of the Registrar General of*

> *the Supreme Court, as contained in his letter dated July 22, 1987. There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India. It is not also the contention of any of the parties that such a direction can be made by the Court."*

Two other judgments cited by him need to be noticed. In ***State of Andhra Pradesh and others vs. McDowell and Co. and others etc., AIR 1996 SC 1627*** and ***State of T.N. and another vs. P.Krishnamurthy and others, (2006)4 SCC 517,*** it was held that the law made by Parliament or the State Legislature can be struck down by Courts only on the grounds of lack of legislative competence and violation of any of the fundamental rights or other statutory or Constitutional infirmity. There is no dispute on this proposition of law. We are not persuaded to read the judgment in this case in the manner argued by the learned counsel.

Surely, the learned Single Judge having scrutinized the record in detail, did not exceed his power under Article 226 of the Constitution of India in holding that the recommendations made by this Court

through a Committee constituted by it had not been brought to the notice of the Hon'ble Chief Justice and the Superintendent(Rules) had not followed the directions issued by the Acting Chief Justice, but prepared a note to his own liking. To say the least, this finding clearly indicates that there was no exercise of legislative rule making power in the real sense which had been usurped by the office, giving distorted version to the Chief Justice. We have also gone through the record in order to satisfy ourselves regarding the correctness of the findings arrived at by the learned Single Judge and do not find that our scrutiny leads us to any other result.

We need to notice one other thing and that is that the employees who are aggrieved by the judgment have not appealed or challenged the judgment. It is only the Court which is aggrieved by the request made by the learned Single Judge to the Hon'ble Chief Justice. In case the non-contesting respondents were aggrieved, they should have challenged the decision on whatever ground available to them and should not have looked upon their employer to initiate and pursue proceedings for seeking a remedy by way of appeal. In ***Sub Inspector Rooplal and another vs. LT.Governor through Chief Secretary, Delhi and Others,(2000)1SCC 644,*** the Court holds that when there is a dispute interse between the employees, the employer should not be a party to such

interse dispute and take up litigation on behalf of one or the other party.

In conclusion, we also note that two of the affected parties who were writ petitioners have not been impleaded as party respondents in the present appeal. The judgment of the learned Single Judge in so far as the two petitioners are concerned, has attained finality and cannot be varied to their disadvantage unless they were impleaded and heard in the matter. Therefore, the decision to this extent cannot be disturbed. In the totality of facts and circumstances of the case, the matter is accordingly disposed of. We hope that the request made by the learned Single Judge will be considered expeditiously by the Hon'ble Chief Justice. There shall be no order as to costs. All interim orders passed in this appeal are vacated.

(Dev Darshan Sud)
Judge.

December 31, 2007. **(Surinder Singh)**
(aks) **Judge.**